

CHAPTER 40B TASK FORCE  
FINAL MINUTES OF THE MAY 20, 2003 MEETING

Commission Members:

Jane Wallis Gumble	Task Force Chair, Director, DHCD
Fred Habib	Facilitator, Non-Voting member, Deputy Director, DHCD
Mark Bobrowski	Municipal Consultant, Professor, New England School of Law
Senator Harriette Chandler	Senate Chair, HUD Committee
Jack Clarke	(Absent) Director of Advocacy, Massachusetts Audubon Society
Howard Cohen	Board Member, Citizens Housing & Planning Association
Representative Michael Coppola	(Absent) Massachusetts House of Representatives
Marc Draisen	Executive Director, Metropolitan Area Planning Council
Steve Dubuque	President, Massachusetts Non-Profit Housing Association
Representative Robert Fennell	Vice Chair, HUD Committee
Thomas Gleason	Executive Director, MassHousing
Bennet Heart	Attorney, Conservation Law Foundation
Representative Kevin Honan	House Chair, HUD Committee
Michael Jaillet	MMA Housing Subcommittee
Al Lima	Planning Director, City of Marlborough
Bill McLaughlin	President, Rental Housing Association of the GBREB
Kathleen O'Donnell	Attorney, Kopelman & Paige
Gwen Pelletier	Board Member, Massachusetts Association of CDC's
Mayor Sharon Pollard	(Absent) City of Methuen
Jeff Rhuda	Homebuilders Association of Massachusetts
Representative Harriett Stanley	Massachusetts House of Representatives
Senator Bruce Tarr	HUD Committee
Senator Susan Tucker	Massachusetts Senate
Senator Dianne Wilkerson	Massachusetts Senate
Clark Ziegler	Executive Director, Massachusetts Housing Partnership

Attendees (as documented on the sign-in sheet):

Judith Alland	MAPC
Roger Blood	Brookline Housing Advisory Board
Karen Bresnahan	DHCD
Michael Cahill	MHOC
Joy Conway	Greater Boston Real Estate Board
Ben Fierro	Lynch and Fierro LLP
Matthew Faher	MMA
Anne Marie Gaertner	DHCD
Paul Haverty	Regnante, Sterio and Osborne, LLP
Kristen Hoffman	Town of Burlington
Jacques Morin	Bayberry Building
Chris Norris	CHAPA
Kristen Olsen	DHCD
Maureen O'Rourke	DHCD
Sotir Papalilo	Westwood Associates
Kate Racer	DHCD
Ted Regnante, Esq	Regnante, Stereo & Osborne
Bill Reyelt	DHCD

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Kevin Sanginario  
Attendees Continued  
Melissa Santucci  
David Soule  
Sarah B. Young

Office of Senator Harriette Chandler  
  
Town of Burlington, Watertown ZBA  
Northeastern University  
DHCD

Materials Distributed:

- Working Draft Of Proposed Language For The Report
- Comments From Judith Alland On The May 5, 2003 Draft Minutes
- Impact Of Counting Total Development Units Towards 40B Percentage
- Impact Of Counting Mobile Homes, Homeownership Units, & Units In The Pipeline (Chart)
- Comparison Of The Brookline Proposal, .75 % Annual Progress, And .5% Annual Progress
- Statistical Trends In Enrollment In Massachusetts Public Schools, Dept. Of Education
- Comments from the Massachusetts Law Reform Institute
- Comments from the Northern Middlesex Council of Governments
- Proposal For Reorganizing The HAC, Submitted By Theodore C. Regnante Esq.

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Adoption of May 5, 2003 & May 12, 2003 Meeting Minutes

Fred Habib, Task Force Facilitator and Deputy Director of DHCD, brought the meeting to order at 10:30 AM, and noted that building security staff had not prepared the badges for Task Force members and attendees in advance which had delayed many individuals downstairs and was the cause for the late start.

Mr. Habib noted that Judith Alland, Chief Regional Planner for MAPC had requested a change to page 9 of the May 5, 2003 Draft Minutes. Mr. Habib explained that Ms. Alland had requested that her comments regarding local aid be clarified by inserting 'the money has to come from somewhere'. He then asked if there were any additional suggested changes. There were no additional changes, and all Task Force members present voted to approve the May 5, 2003 Minutes with Ms. Alland's requested change.

Mr. Habib then noted that no requests for changes to the May 12, 2003 Minutes had been received, and asked if anyone would like to request changes. No changes were requested and all Task Force members present voted to adopt the May 12, 2003 Minutes.

Mr. Habib noted that, as promised, the draft language on the proposals the Task Force had discussed was emailed to Task Force members on Friday, May 16<sup>th</sup>. He noted that the draft language included some additional ideas that had not been discussed by the Task Force. He then explained that the Task Force discussion would be based on this draft language today.

Density (Page 11 of the Draft Language)

Mr. Habib noted that the Draft Language included the following three proposals to address density issues.

1. Amend the site eligibility criteria to include findings that the density is generally appropriate for the site in which it is located taking into account surrounding land uses, proximity to transportation, services and public utilities, and compactness to minimize land use impacts.
2. Acknowledge that the density guidelines for homeownership used by MassHousing and DHCD (8 units/acre or four times surrounding density) have been effective.
3. Recommend that each funding agency in Massachusetts adopt guidelines for considering project design and density for rental developments.

Ms. Alland noted that it was her understanding that the first proposal was the only one that would be incorporated into site approval letters, and asked if this was correct.

Mr. Habib responded that Ms. Alland was correct, and added that the site approval letters could also reference MassHousing's density guidelines.

Tom Gleason, Executive Director of MassHousing, clarified that the density guidelines were used for the HOP program, and are not hard and fast rules. He explained that in some cases projects are approved with greater density than the guidelines suggest.

Mr. Habib asked if it would help the project administrators to at least have some guidelines for density.

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Mr. Gleason responded that as MassHousing is the only current project administrator, it would be helpful to have some guidelines. He noted that establishing some density guidelines would make it abundantly clear that if a developer proposes a project at a density greater than the guidelines suggest, then the developer would need to prove or demonstrate the necessity for the greater density. He added that in the past these guidelines enabled MassHousing to move some projects along more quickly.

Kathleen O'Donnell, Attorney for Kopelman & Paige, noted her support for density guidelines, as they would at least provide you with some idea of what to expect.

Mark Bobrowski, Municipal Consultant & Professor at the New England School of Law, noted that he supported the density guidelines and added that if the density of a project was less than 8 units per acre the burden should fall on the municipality, while if the density was greater than 8 units per acre then the burden should fall on the developer.

Mr. Habib noted that there was consensus on the first two density proposals.

Howard Cohen, Board Member of CHAPA, asked if the 8 units per acre applied only to homeownership projects.

Mr. Habib answered that the 8 units per acre is for homeownership only, and that there are no limits to rental density.

Mr. Cohen suggested combining the first two density proposals together.

Jeff Rhuda, of the Homebuilders Association of Massachusetts, asked if there would be one standard of density for rental development and another standard for homeownership.

Mr. Habib explained that the guidelines were for homeownership, and that in order to do a project denser than the guidelines, the greater density would need to be justified. He added that for rental projects the density would need to be generally appropriate for area.

Mr. Rhuda noted that this would likely result in more rental developments being built under 40B in suburban communities.

Mr. Habib noted that there was consensus on all three density proposals.

Extending the time, beyond 1 year when comp. permit units can count on the inventory before a building permit is issued (Page 3 of Draft Language)

Mr. Habib noted that concerns have been raised that some communities have very legitimate reasons for delays in issuing building permits after issuing a comprehensive permit. He noted that larger developments may require site improvements that make it difficult to obtain a building permit within one year. He explained that DHCD's proposal is to keep the time limit at one year, but to allow for waivers for up to two years.

Al Lima, Planning Director for the City of Marlborough, asked if it would be appropriate to describe specific criteria for waivers.

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Mr. Bobrowski noted an example of a project that would need water/sewer extensions before proceeding to construction, which wouldn't happen within one year.

Steve Dubuque, President of the Massachusetts Non-Profit Housing Association, asked if there was a time limit for taking action on a comprehensive permit.

Mr. Habib noted that a comprehensive permit is good for three years, and explained that it is DHCD's position that if the delay in issuing a building permit is not caused by the municipality then the period should be extended.

Ms. O'Donnell noted that there are other factors that can delay the issuance of a building permit, and that often delays are not the community's fault.

Mr. Rhuda noted that it is very difficult to get everything in line for a building permit in only one year. He then asked whether the units would be counted if the comprehensive permit were appealed.

Anne Marie Gaertner, Senior Policy Advisor for DHCD, noted that units are not counted in the subsidized housing inventory until the comprehensive permit becomes final. She explained that the comprehensive permit becomes final only after the 20-day appeal period lapses.

Mr. Lima noted that often projects are issued building permits in phases over time, noted that he would assume that those units would be counted in the inventory. There was general agreement that Mr. Lima's assumption was correct.

Mr. Habib noted that he was hearing consensus on the proposal for a one-year limit for the issuance of building permits with a wavier provision.

All Task Force members agreed.

#### Smart Growth

##### Project Eligibility Letter (Pages 5-7 of the Draft Language)

Mr. Habib noted that the proposal to increase the amount of information contained in the project eligibility letter contained language that required the project administrator to consider smart growth in the determination of eligibility in section C of page 7.

Mr. Rhuda noted that Section C on page 7 talks about 'environmental impact'. He expressed concern that MassHousing doesn't have authority or expertise to delineate wetlands, which would hold up the process considerably. He suggested replacing 'environmental impact' with 'impact'

Bill McLaughlin, President of the Rental Housing Association of the GBREB, noted that Mr. Rhuda's suggestion was consistent with Chapter 141A.

Mr. Ziegler noted that project administrators have two major considerations in reviewing a project; the reasonableness of project to proceed & the general impact it will have.

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Mr. Gleason noted that project administrators look at capability of development team to move forward, and that he didn't think this stipulation would require administrators to go deeper in the review than they do currently.

Mr. Rhuda noted that this could stretch out the period for receiving a project eligibility letter since there would be conservation commission people at that initial local meeting, and there would be a discussion of the delineation of wetlands.

Attorney Kathleen O'Donnell noted that though this may make the initial steps take longer, it would save time in the long run.

Marc Draisen, Executive Director of the Metropolitan Area Planning Council, noted that the definition of smart growth in the draft language was very moderate, and added that the formatting makes it look like smart growth only pertains to environmental impacts. He suggested adjusting the formatting to make it smart growth a separate bullet point.

Mr. Habib noted that the formatting would be adjusted.

Michael Jaillet, of the Massachusetts Municipal Association suggested amending the language to clarify that local rules would be off the table.

Mr. Bobrowski noted that he didn't think local rules would need to be discarded entirely. He explained that they would only be overridden if they would make the project uneconomic.

Attorney Kathleen O'Donnell explained that since the draft language was only for the eligibility letter (and not the permit) not every issue needs to be addressed specifically.

Mr. Lima suggested the draft language be amended to include historic preservation. He explained that he has heard that historic preservation can be an issue considered by the project administrator, but that he hasn't seen a specific example.

Attorney Kathleen O'Donnell supported Mr. Lima's suggestion for inclusion of historic preservation.

Mr. Habib noted that the draft language would be amended to include historic preservation. He also noted that 'environmental impact' would remain in the draft language and that the smart growth bullet would be reformatted.

Planned Production (Page 12-13 of the Draft Language)

Mr. Habib noted that the draft language in section C on page 13 requires that all planned production plans include smart growth principles.

Mr. Rhuda asked if that would allow retail and mixed use.

Mr. Draisen noted that the distinction between a housing plan and use of 40B. He explained that a housing plan would have a greater variety of types of development than a specific 40B project. He then asked when the administration would be announcing the principles of smart growth.

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Mr. Habib noted that the Office for Commonwealth Development would be releasing the principles of smart growth soon.

Mr. Bobrowski noted that according to Housing Appeal Committee (HAC) case law, non-residential space must be integrally related to the residential space in a comprehensive permit project.

Mr. Ziegler noted that he interprets that to mean that the non-residential space must be related to the feasibility of the project.

Mr. Cohen noted that clarification on this topic would be helpful. He noted that the distinction between a developer trying to impose commercial development on community and a community that wants to use 40B to do commercial & residential development. He suggested drafting the language in a manner that would make commercial use with 40B allowable at the discretion of the community.

Mr. Habib noted that DHCD would expand the language to reflect Mr. Cohen's suggestion.

Housing Region (Page 16 of the Draft Language)

Mr. Habib noted that the draft language on page 16 provides for contiguous communities to form a housing region, where the statutory minima for affordable housing may be achieved by creating the aggregate number of units in fewer than all the participating communities. He explained that communities in these housing regions could create inter-local agreements providing for the allocation of units for credit in the subsidized housing inventory and that DHCD would respect these agreements for the inventory.

Mr. Draisen asked if this would apply to new development or planned production.

Mr. Habib responded that it would apply to new development.

Mr. Rhuda suggested amending the language to clarify that this would only be applicable to newly restricted or newly constructed units.

Mr. Dubuque noted that this should only apply to new housing not existing housing.

Attorney Kathleen O'Donnell suggested replacing 'inter-local agreement' with 'inter-municipal agreement' in the draft language.

Mr. McLaughlin asked if the housing would have to meet the DHCD standard for eligibility in the subsidized housing inventory.

Bennet Heart, Attorney for the Conservation Law Foundation, suggested linking this to smart growth principles, so that in order for DHCD to approve a trade the units would have to be consistent with smart growth principles.

Mr. Gleason noted that Mr. Heart's suggestion would require the state to critically review each request for the allocation of units in housing regions.



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Mr. Bobrowski noted that New Jersey already has this type of provision in place, and that in NJ a town can have up to 50% of their affordable housing obligation in other communities. He offered to fax the NJ language.

Mr. Ziegler noted that this raises the question about how much of a town's obligation can be in another community. He noted that this would garner more support if a minimum in-town obligation was set.

Mr. Draisen noted that he was open to this idea because it may speed up production between communities, but that he wasn't clear why it should be tied to smart growth. He suggested that a minimum percentage of the affordable housing obligation should be in the community.

Mr. Heart suggested that the in town obligation should be 5%. He noted that it would be nice to give towns this flexibility, and noted that it was an opportunity to serve another purpose by including the smart growth principles.

Mr. Draisen noted that at some point Representative Kevin Honan had suggested testing this proposal with some pilot communities and that he supported this approach.

Mr Habib noted that under this proposal communities would still have to get to 10%, but they would be allowed to trade units to get there.

Attorney Kathleen O'Donnell noted that not many communities would take advantage of this housing region proposal. She explained that only communities that need to share water/sewer resources would probably use it.

Mr. Lima noted that communities would not likely use this because they wouldn't want to give up their excess units due to the impact the next decennial census would have on their subsidized housing inventory percentage. He explained that communities would need to keep their extra units for the next time the year round count was updated. He added that he was concerned that this gives the impression that rich towns can get out of building affordable housing.

Senator Dianne Wilkerson asked why the Task Force would do this if they believed it would have little impact.

Attorney Kathleen O'Donnell responded that this would give communities increased flexibility.

Sarah B. Young, Deputy Director for Policy at DHCD, noted that under this proposal towns would still have to get to 10%, but they would be allowed to share the benefit of development that impacts more than one community. She explained that if a community builds the housing units but another community provides the sewer for those units, this proposal would allow the community providing the sewer to be credited for some of the units.



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Senator Dianne Wilkerson asked if this would ensure no double counting of units and if it would allow some units to be counted in a community where they are not actually located.

Ms. Gaertner noted that one example of how this would apply is the situation where access to a parcel is from one community, while the units are located in another community. She explained that currently though the community through which the access is provided is impacted by the project, they do not get the benefit of counting the units.

Senator Harriette Chandler noted that the issue that she was concerned about was that communities could buy units from other communities.

Mr. Habib noted that there were two issues; Access and linking to smart growth. He then asked if this proposal responds to access issues.

Mr. Draisen responded that the proposal does respond to access issues, and asked Ms. Gaertner if in her example no units would be double counted.

Ms. Gaertner responded that no units would be double counted.

Mr. Draisen noted that this would probably be used rarely, and be done on a case by case basis.

Mr. Cohen noted that it makes a difference if both communities are over 10% compared with a situation where one of the communities is under 10%. He asked what would happen if Belmont offers Cambridge X dollars, in exchange for units.

Representative Kevin Honan noted that he and Senator Harriette Chandler have been visiting numerous communities and have found that many of the planners believe that their communities are built out, which is a good reason to go forward with this proposal.

Mr. Habib suggested narrowing the language to limit this to situations where there is a shared impact. He then noted that he was not hearing consensus on linking this with smart growth.

Mr. Rhuda noted the need to set a minimum standard so that no community could get out of affordable housing entirely, to make sure that this applies only to new development/new restrictions.

Mr. McLaughlin noted that this may have more impact than the Task Force would expect since the vast majority of 40B projects are on the town borders. He suggested that this proposal should apply only to contiguous sites.

Representative Harriett Stanley noted that she supported allowing towns to buy units if it would result in more production. She also noted that she agreed with Mr. Rhuda that there should be a minimum of in-town affordable housing of about 5% and that the communities should be contiguous.

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Senator Dianne Wilkerson noted that the draft language says that communities must be contiguous to form a region, not to share units. She suggested amending the language to require the communities be contiguous to share units. She added that she was still not fully on board on this, because communities would be able to get out of building affordable housing. She added that many communities are low on the subsidized housing inventory and have been for long time.

Representative Harriett Stanley suggested requiring communities to get to 5% before they could engage in this type of agreement, to motivate them to start building.

Mr. Dubuque noted that the principle behind this is that with smart growth we are trying to move communities towards planning, and there is a lack of regional planning in Massachusetts. He noted that he thought it was appropriate for a number of communities to create a regional plan that includes 10% affordable housing for all communities and present it to DHCD. He also noted his opposition to viewing affordable housing as 'nuclear waste'.

Representative Harriett Stanley asked if communities A and B are contiguous, and community A is close to 10% and is willing to accept production on a less desirable site to get to 10%, why not allow them to negotiate to build smarter/better?

Mr. Draisen noted the need to separate the issues. He explained that where there is an access problem it is reasonable to allow communities to work together to accomplish the production and to share the credit. He added that much more thought needs to be given to the larger question. He explained that he thinks that planning and linking to planned production is a good objective, and if it incites more development than the Task Force should consider it. He noted that it should incorporate a minimum in-town standard and be subject to serious DHCD review. He added that it seems that wealthy communities with expensive land already have a mechanism to avoid 40B projects, and if there is a way to address that imbalance the Task Force should consider it.

Mr. Rhuda noted that eliminating cash from the equation would eliminate a lot of fears. He suggested specifying that the exchange should be limited to services or sewer/water. He added that the greatest enemy of smart growth is town lines, and cited an example of 60-unit LIP project in Wenham that received sewer and water from Beverly. He explained that these units wouldn't have been built without the cooperation of both towns.

Senator Harriette Chandler noted that she has found that people are looking for ways to block 40B, and it would be nice to provide them with ways to make 40B work.

Mr. Gleason noted that he supports a more minimalist approach. He explained that real estate is based on a willing buyer and a willing seller and it shouldn't be a problem if cash payments are involved. He noted that over the years 40B has been highly flexible and that this flexibility should continue. He explained that he didn't see a problem if a community was willing to accept an amount of money for constructing affordable units. He asked Task Force members to keep in mind that the objective is to promote the construction and production of housing. He added that he supports a minimum in-town housing requirement.

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Mr. Bobrowski expressed concern with rushing to regionalism without the necessary analysis. He explained that in NJ, there was a 3-judge tribunal before the state took over the establishment of regions.

Representative Harriett Stanley noted that regions may already be established via school or water districts.

Mr. Draisen added that he believes these regions would be small.

Mr. Lima asked Task Force members to remember the moral standard that each community has an obligation to fulfill the 10% requirement. He added expressed concern that if money were involved, rich communities would buy out of their responsibility.

Mr. Cohen noted that if both communities are below 10% and they are both working to reach a goal, then it is reasonable to allow them to cooperate once they each get to 5%.

Mr. Heart asked if Mr. Cohen was concerned that towns over 10% would lack the judgment to evaluate what they are being offered in exchange for building units. He also noted that the project on the border of Wenham and Beverly that Mr. Rhuda had described, was not consistent with smart growth. He added that this should be about more than increased production, it should also be about giving towns greater options, and promoting smart growth.

Mr. Cohen noted that the distribution of affordable housing is a benefit to the Commonwealth, and that he didn't think it would be good idea to concentrate affordable housing in the same communities.

Mr. Draisen recommended requiring a minimum of 5% on the subsidized housing inventory and prohibiting communities from doing this if they are already at 10%. He added that this should involve smart growth principles and should be pursued in the spirit of a pilot program. He suggested that DHCD allow this in a small number of communities and evaluate impact over the years to see if there are any unintended consequences.

Mr. Jaillet expressed concern about limiting the communities that can discuss this type of scenario.

Mr. Draisen suggested that if the negotiation involved a community that is over 10% and one that is below 10%, then it would have to be new construction.

Attorney Kathleen O'Donnell noted that it has already been established that this would only be applicable to new construction.

Mr. Heart asked if the 5% requirement meant that a community couldn't trade until they were at 5%, or if it meant that they could only trade for up to 5%.

Representative Harriett Stanley responded that it meant that a community couldn't trade until they reached 5%.

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Senator Dianne Wilkerson suggested requiring that a community's zoning would allow them to get to 10%. She noted that all communities receive state money, and in exchange they have an obligation to provide affordable housing. She noted that she didn't want to see communities that have no intention of building affordable housing, to get out of it with this mechanism.

Mr. Heart suggested requiring that in order to be able to trade, communities need a plan for affordable housing.

Senator Harriette Chandler noted that the foundation for all of this should be all 351 communities with housing plans and with zoning that is consistent with those plans.

Mr. Habib noted that currently there are over 200 communities doing plans with EO 418 funds.

Mr. Draisen suggested that the only way a community could utilize this trading scenario is if they are at 5%, have a plan, and their zoning allows them to reach the goals in their plan.

Senator Dianne Wilkerson suggested that DHCD's standard for evaluating these proposals should be that the community has a real plan for production, and has the zoning to achieve those goals. She noted that there have been discussions about mandating plans, and noted that the legislature has this authority. She explained that since every community receives state funding, they should all be held accountable for achieving the goals of 40B.

Mr. Habib noted that DHCD would draft new language incorporating:

1. site-contiguous requirements
2. 5% minimum on the subsidized housing inventory, planned production, & smart growth

Senator Harriette Chandler asked what the repercussions would be if towns don't meet this standard.

Representative Harriett Stanley responded that those towns would be subject to 40B proposals.

Attorney Kathleen O'Donnell asked Task Force members to consider that some communities want 40B projects.

Planned Production:

Mr. Habib explained that the current planned production regulations provide one year off for .75% progress and two years off for 1.5% progress. He then noted that there are two proposals on the table related to planned production; 1) reduce the requirement to .5% and 2) change the requirement to 10% of the gap in what a town has and what they need to get to 10% every two years (proposed by Brookline). He asked Task Force members

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to refer to the document that showed a comparison of the Brookline proposal with the .5% requirement.

Mr. Habib noted that the chart illustrates that the problem with Brookline proposal is that it would take 87 years to get to 10% since each year the number of units needed to close the gap would be reduced. He added that the chart showed a second option that would allow towns over 5% to build at a slower rate.

Mr. Rhuda noted that one of the objectives of the Task Force is to build affordable housing, and that the Task Force is talking about a lot of things that would slow down production.

Mr. Ziegler noted that he has personally been pushing for .5% rather than .75%, because it is more attainable for communities. He noted that planned production provides communities with a way to continue to do development year after year. He added that the Task Force should discuss allowing for a multi-year average, to avoid discouraging larger or better projects. He suggested a 3-year average.

Mr. Cohen suggested that if a community does a deal resulting in a 6% increase, then they should be allowed the same amount of time off that they would have received if they had done 6% at the minimum annual production rate. He added that the state would be better off in the long run if we provide communities with reasonable and realistic goals.

Jane Wallis Gumble, Director of DHCD and Task Force Chair reminded the Task Force that their audience is the legislature, and that they need to be able to sell their proposals to this audience.

Mr. Gleason noted that he firmly believed that this is one of the issues that the Task Force should reach consensus on, and that the Task Force should give on it. He noted the need for attainable goals, and increased time off for large projects. He also noted that he did not support creating a separate standard for communities at 5%.

Mr. Heart agreed with Mr. Gleason that providing an achievable goal would be a win-win.

Senator Harriette Chandler noted that the House accepted .5% last year, and that the Senate had accepted 1%. She explained that the .75% was an arbitrary number that was reached as a compromise between the two and asked if the House would now accept .5%.

Representative Kevin Honan noted that he believed this would be a step in the right direction.

Representative Harriett Stanley agreed.

Representative Kevin Honan noted that this would show a tremendous good-faith effort on behalf of the Task Force.

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Mr. Jaillet supported multi-year averaging as an incentive for communities to do planned production and as an incentive to do larger projects.

Mr. Habib clarified that the proposal is for .5% per year, and that if a community does 2% then they would get 4 years off. He then noted that there was total consensus on this proposal.

Representative Harriett Stanley noted that a three-year average is reasonable.

Mr. Draisen asked if getting time off meant that nobody could file a 40B application.

Mr. Ziegler responded that time off means that you don't have to accept 40B applications.

Mr. Draisen expressed concern that communities would be taking time off and would not be producing housing during that time off.

Representative Harriett Stanley explained that communities would continue to build affordable housing because they would not want to be in a "hurry-up and stop cycle". She added that this would provide communities with a greater ability to approve projects that they like.

Mr. Gleason noted that if a community takes on a bigger deal, and they want to take time to plan for absorbing the impact then they should get time off for good behavior.

Mr. Habib noted that the group was talking about two things; 1) 3 -year average for determining whether town has done the minimum 2) More time off for exceeding annual minimum with three- year cap for time off.

Attorney Kathleen O'Donnell suggested focusing on the proposal for more time off if a community does more than .5% in one year.

Mr. McLaughlin noted that he believes .5% is too low. He explained that in some communities .5% is only 12 units. He suggested that if a community does 2.5% they should get 5 years off, because otherwise the town would say they will approve a 1.5 % increase in units because that's all they need to do to get three years off. He noted that a three-year cap would deter communities from doing larger projects.

Ms. Gaertner noted that this would only be a minimum, and that towns zoning boards could not deny proposals until the minimum had been achieved..

Senator Dianne Wilkerson asked for clarification as to whether time off meant, time off from accepting applications or time off from approving applications.

Representative Harriett Stanley responded that the time off is the option to either not accept or to deny an application if they have done recent progress.

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Attorney Kathleen O'Donnell noted that ZBAs are volunteer boards and that reviewing a comprehensive permit application consumes a great deal of time. She added that this time off provides them an opportunity to get their lives back together.

Mr. Bobrowski noted that this is all held hostage by the 3-year lapse provision, and noted the need to clarify that the 3-year lapse provision applies only to appeals to HAC.

Mr. Dubuque noted that the Task Force wants whatever is counted to be real, and not subject to appeal forever.

Mr. Rhuda noted that units can't count if the project is in appeal.

Mr. Bobrowski explained that there is a town that approved one application that gets them over 10%, and has three other applications in pipeline. He noted that this town can't say that they are at 10% until the appeal on the ZBA decision is resolved.

Mr. Rhuda noted that the Task Force should not base the regulations on one example of a bad actor developer.

Mr. Jaillet noted that the phrase "time off" is confusing and suggesting amending the language to better reflect what the Task Force is trying to achieve. He added that while he understands the desire to count units that are in appeal, he doesn't think it's the right thing to do. He suggested providing incentives for communities to settle matters without having to go to appeal, and recommend that communities provide abutters with some benefit to keep them from appealing.

Mr. Habib noted that there was consensus for .5%, providing more time off for production greater than .5% with a three-year cap. He then noted that there were three remaining topics on the agenda; 1) issues outside 40B 2) homeownership 3) the language that was distributed last week.

Homeownership:

Mr. Habib noted that Representative Harriett Stanley would present information on the current counting policy. He also noted that there were three proposals for homeownership on the table; 1) Mr. Cohen's proposal (removing homeownership units from the base number), 2) Jacques Morin's proposal (count affordable homeownership units twice, and 3) count all homeownership units (retroactive or going forward only).

Representative Harriett Stanley noted that she was advocating for counting 100% of homeownership units, and that this should be going forward only (not retroactive). She asked Task Force members to refer to the document titled "Ownership Count Analysis" in their packets. She explained that this analysis shows that current counting policy would result in a 66% growth factor if a community built homeownership units to reach 10%. She explained that in terms of simplicity and fairness, homeownership units should be counted at 100%. She added that would not slow down production, rather it would make 40B less controversial for communities.

Mr. Cohen noted the need to discuss the other counting ideas that have been proposed in the legislature, such as mobile homes and Section 8 Vouchers. He noted that these ideas



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came from legislators trying to solve problems for specific communities, and not in the context of the comprehensive analysis undertaken by the Task Force.

Representative Harriett Stanley responded that it would seem that counting homeownership at 100% would take almost everything else proposed by the legislature off the table.

Mr. Habib asked Representative Harriett Stanley if that would include taking mobile homes off the table.

Representative Harriett Stanley responded that it would.

Representative Kevin Honan noted that in general, wealthy households do not reside in mobile homes, and that the legislators for communities with mobile homes would fight for them to be counted.

Representative Harriett Stanley noted that she had proposed that legislation for counting mobile homes, in response to the unfair counting policy. She added counting homeownership units at 100% would address the fairness issue.

Mr. Rhuda asked if anyone had considered that counting mobile homes would provide an incentive for the construction of mobile homes or manufactured housing.

The question was asked whether the Task Force was discussing manufactured housing or mobile homes, and if there was a difference in the two.

Ms. Gumble noted that manufactured housing is the more acceptable term for referring to mobile homes.

Mr. Habib noted that manufactured housing would have to be within parks to be counted.

Mr. Heart asked if allowing newly constructed mobile homes to count would that satisfy the legislators.

Senator Harriette Chandler noted that existing mobile homes should be counted.

Mr. Habib noted that this was good time to look at the chart “Impact of counting Mobile Homes, Homeownership Units and Units in the Pipeline” in the packet. He noted that this chart shows the impact of the numerous counting proposals. He explained that the information available on mobile home units is from the US Census, which does not designate which units are in parks. He added that DHCD has been informed that some communities have rent control on parks so it would be easy to income verify those units. He explained that DHCD’s approach in this analysis was to assume that 100% of the incomes could be verified in the rent-controlled communities, while only 25% of the incomes could be verified in non-rent control communities. He noted that with this assumption only 14 communities would go over 10% (column A in the chart).

Mr. Habib added that if all existing homeownership units counted, then only one community would go over 10% (column B in the chart). He the noted that it is known

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that about 60% of all applications for comprehensive permits get built, and that DHCD has information on the outcomes of 22 comprehensive permit proposals which shows that about 75% of the proposed units were approved. He explained that DHCD thought it was reasonable to assume that 60% of the units in the pipeline would be built, and that with this assumption 7 communities would go over 10% (column C). He then noted that if the mobile homes and the units in the pipeline were counted 23 communities would go over 10% (Column A+C), and if the mobile homes, existing ownership units and units in the pipeline were counted 28 communities would go over 10% (column A+B+C).

Mr. Habib noted that the chart titled “Comparison of Methods of Counting 40B units” compares the current counting policy, Mr. Cohen’s counting proposal, Mr. Morin’s proposal, and counting 100% of ownership units.

Mr. McLaughlin noted that in addition to the impact on the 10% threshold the Task Force should also consider the 1.5% land area minimum. He noted that he was particularly concerned that counting 100% homeownership units would enable communities to get to the 1.5% much quicker, and the 10% threshold would no longer be relevant.

Mr. Habib explained that 40B has a provision that if affordable housing is on 1.5% of the land in a community, then the community is considered to have met the local/regional housing need. He then acknowledged that if counting 100% homeownership units were applied to this 1.5% land area minimum the 10% would be irrelevant. He explained that DHCD’s policy would be that only the land under the affordable homeownership units could count towards the 1.5% land area minimum.

Mr. McLaughlin noted that he thought that policy was appropriate.

Mr. Rhuda noted that 1.5% was in direct conflict with smart growth and greater density, and suggested eliminating it.

Mr. Habib noted that DHCD proposes that if 100% of homeownership units count, communities should get time off for rental production in order to keep an incentive for rental production.

Mr. Rhuda noted that in reviewing Representative Harriett Stanley’s chart, he noticed a direct correlation between a high growth rate and a low subsidized housing inventory percentage. He explained that by counting 100% of homeownership units, the Task Force would be rewarding communities that have ignored the 10% requirement. He then asked why communities that are at 2-3% should be rewarded. He asked Task Force members to look at Somerville and Billerica in Representative Stanley’s chart. He noted that the lower the subsidized housing inventory, the higher the growth required growth rate.

Representative Harriett Stanley responded that the whole idea of what the Task Force is trying to do is making 40B more fair and palatable to communities.

Mr. Cohen noted that when the rule was adopted for homeownership, there was not a lot of homeownership production. He added that he had run some numbers that showed that if a community did 50% ownership and 50% rental and mobile homes were counted the required growth rate would be reduced by 75%. He added that a lot of the ownership

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units that are being built are very expensive, and that he has hard time knowing that those units would be counted the same as affordable rental units. He noted that he supported counting affordable homeownership units twice, but not counting mobile homes. He also noted that he has seen a lot of the mobile home parks and noted that the new ones are really nice but the old ones are pretty run down. He noted that he did not like the idea of counting those older rundown units, and preventing further development of new affordable housing.

Mr. Dubuque noted that it was almost 1:00PM, and asked Mr. Habib the Task Force would finish the agenda.

Mr. Habib responded that they would try to make some more progress.

Mr. Dubuque noted that counting all homeownership units with the intention of greater fairness, would be disservice to the people who are looking for rental housing.

Mr. Habib asked Mr. Dubuque if he would support Mr. Cohen's or Mr. Morin's proposal because there would still be an incentive for rental. He asked if it was more effective to have the incentive in the counting or for one year off.

Mr. Draisen noted that the Task Force members should think about where 40B came from. He explained that when it was established the developments were 100% rental and 100% affordable, and that this has changed significantly. He noted that the elegance of the CHAPA proposal is that it removes the penalty to communities for doing homeownership. He noted that communities that have been open to development are finding that the 10% goal is disappearing in the distance.

Mr. Lima noted he supported the idea of simplicity, and asked how the current differential in the counting policy could possibly be justified. He asked how the Task Force could possibly support not counting all homeownership when they have such a municipal impact.

Mr. Gleason noted that he has supported counting units one for one for years, and that there is a need to keep it simple. He noted that communities give the same density bonus to ownership as to rental and that this density bonus is a tremendous benefit. He suggested that if the state wants to place a higher emphasis on rental affordability then it should direct its funding to rental production. He noted that he couldn't support the CHAPA proposal, but he could possibly support counting affordable ownership units twice. He noted that the CHAPA proposal is too hard and they would never be able to keep up with it

Mr. McLaughlin noted that this counting policy is the only incentive available for rental developments. He noted that he was not willing to adjust the denominator, but would be willing to go to counting affordable ownership units twice.

Mr. Habib noted that he hadn't heard consensus on this, and asked Task Force members to keep in mind that the audience is the legislature.

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Mr. Draisen noted that he supports the CHAPA proposal because it ‘holds the line’ and he thinks the Task Force should hold the line on this issue.

Mr. Heart noted that the CHAPA proposal removes the absurdity of chasing the 10%, and that he didn’t think it would be that hard to keep up with. He added counting mobile homes should only be counted going forward.

Mr. Habib noted that counting mobile homes going forward wouldn’t get anywhere in the legislature. He added that DHCD prefers the more simplistic approach to counting all ownership units going forward, and that CHAPA’s proposal is too difficult

Mr. Lima asked what the justification was for the distinction in the counting policy.

Mr. McLaughlin noted that the most expensive apartments in the 40B developments that he has built, pale in comparison to price of the condos that are being built under regular zoning.

Representative Harriett Stanley noted her support for a simple solution. She also noted that if the Task Force doesn’t make enough of a change, all the proposals in the legislature would likely come back.

Jacques Morin, of Bayberry Building, note that his proposal would provide an incentive for rental housing because communities would seek higher affordability in rental developments to get credit for more units.

Mr. Habib suggested that Task Force members think about this issue and discuss it amongst themselves during the week. He noted the need to find some middle ground on this issue. He also asked that if anyone has comments on the draft language that was distributed last week to get them to DHCD ASAP.

Changes Outside 40B:

Mr. Habib noted that there seemed to be consensus for an analysis of 40A, and asked Task Force members if that was correct. The Task Force members agreed and Mr. Habib noted that DHCD would draft a statement recommending a review of 40A.

Schedule:

Mr. Habib noted that at the next meeting DHCD would provide new language on regional housing, homeownership units, and one or two issues outside of 40B. He explained that Task Force members would be responding to final draft at the next meeting. He added that the Task Force is scheduled to report to the Governor Friday, May 30<sup>th</sup> and that the Governor is planning to announce the report Thursday, June 5<sup>th</sup>. He noted that the Governor has invited Task Force Members to attend the event and stand behind their report.

Mr. Habib also noted that beyond that event, there would be considerable outreach to the members of the legislature. He added that Senator Harriette Chandler had suggested meeting with the groups of residents that had provided comments to the Task Force to explain the outcome of the report was excellent. He noted that it would also be helpful if

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Task Force members go out and talk about the issues that have been discussed and the solutions they have developed.

Representative Kevin Honan noted that the idea of explaining the compromises to the town administrators and town planners was a great idea, because they are the driving force behind the legislature's actions on 40B.

Senator Harriette Chandler suggested that it would be helpful to prepare a power point presentation for Task Force members as they do their outreach, so that everyone stays on point.

Attorney Kathleen O'Donnell noted that the Task Force had not discussed the HAC analysis letter from Ted Regnante.

Mr. Habib noted that Mr. Regnante's letter proposed that the Governor announce the committee to review the HAC one month after the Task Force report was submitted, and that they would submit their final report in November.

Mr. Lima expressed concern that the affordable units in 40B projects are no longer really affordable.

Mr. Gleason responded that the NEF projects are set to be affordable to households earning 70% area median income.

Ms. Gumble noted that the affordable prices are impacted by the increasing median family income.